DOCUMENT RESUME

ED 211 878 CG 015 670

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TITLE Some New Facets of the Psychology-Law Interface.
PUB DATE Aug 81
NOTE 11p.; Paper presented at the Annual Convention of the American Psychological Association (89th, Los Angeles, CA, August 24-26, 1981). Best copy available.

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Correctional Rehabilitation; *Criminal Law; Criminals; Decision Making; Intervention; Legal Problems; *Psychologists; *Punishment; Research Needs; *Research Utilization; *Sanctions; State of the Art Reviews
IDENTIFIERS *Forensic Psychology

ABSTRACT

While the field of forensic psychology has emerged as a recognized discipline, psychologists who work within institutional settings frequently feel frustration in dealing with inmates for whom they have had no responsibility or input during the critical pre-trial, trial and sentencing decision-making process. The roles and ways in which psychology functions within the criminal justice system can be classified as Psychology in Law, Psychology of Law, and Psychology and Law. Psychology in Law refers to the accepted function of psychology and psychologists, as expert witnesses or resources, in such areas as competency to stand trial and criminal responsibility. Psychology of Law encompasses such concepts as the behavioral nature of law and society's perceived need for law. Psychology and Law include instances in which psychological concepts and research data have had a direct impact upon the legal system. Psychology should make a concerted effort to develop and provide a database to assist courts in such areas as sentencing and punishment procedures. To implement such efforts, both professional and political interfaces are being identified and developed to permit an orderly and effective application of psychology to the justice process. (NRB)

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# SOME NEW FACETS OF THE PSYCHOLOGY-LAW INTERFACE

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Paper presented at the Annual Convention of the American Psychological Association, Los Angeles, CA, August 1981.

# Some New Facets of the Psychology-Law Interface[1]

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## Introduction

While most of the speakers on this symposium have addressed the problem of role conflicts that they have experienced within a correctional institution, the topic of this presentation will be concerned with a different dimension of discontent that some psychologists may be experiencing within the criminal justice system, and perhaps within the broader field of jurisprudence itself. In this regard, note must be made of a recent article by Haney (1981) which treats in greater depth and inclusiveness many of the ideas explored in this presentation. Indeed, the appearance of this seminal article, following as it did the submission of the abstract of this paper for the present symposium, seemed to suggest the operation of the "Zeitgeist."

The main thrust of what I wish to talk about today is the need to see psychology more at the "cutting edge" within the criminal justice process rather than at the receiving end. Those of us who work within institutional settings quite frequently sense a feeling of frustration as inmates are sent to us from the Courts with the implicit (and in some cases explicit) injunction to treat or otherwise do something with them. Thus we are faced with the prospect of dealing with individuals, after the fact, for whom we have had no responsibility or input during the critical pre-trial, trial, and sentencing decision-making process. It is not so much a matter of objecting to the idea of treatment within a correctional setting per se, but to the conditions under which treatment is to occur, in that we have had no influence in shaping the parameters of the client population whom we must treat.

While the field of forensic psychology has now emerged as a recognized discipline, and as a boarded specialty within professional psychology, this central discipline of the behavioral sciences, has not yet in any way begun to achieve it's potential

as an interface at the "cutting edge" of the legal decision making process.

Roles of Psychology Within the Criminal Justice System

It will be helpful to classify the various roles and ways in which psychology functions within the criminal justice system. Following the suggestion of Haney (1981) we may speak of Psychology in Law, Psychology and Law, and Psychology of Law.

Psychology in Law

Psychology in Law refers to the more or less accepted function of psychology and psychologists, as expert witnesses or resources, in such areas as competency to stand trial, criminal responsibility (NGI, diminished capacity), reliability of eyewitness testimony, and human performance, for example. In all cases the psychologist lends his expertise and attempts to operate within the parameters (and constraints) of the existing legal system. Such work rarely has any impact on the system in the sense of effecting legal change and is generally restricted to the case at hand. Such work also tends to originate from a reactive and adversarial rather than a proactive posture. Additionally, in many instances the data and concepts of modern psychology are severely strained since the methodology, theories, and fundamental paradigms of natural science laws of psychology are often incompatible with those of juridicial law (e.g., NGI pleas, mens rea, and the nature of punishment). Thus it can be seen that as long as psychology continues to function within such a traditional mode, little if any significant change can be expected to result and also, it may be added, neither will the problems of human behavior and existence within this system be effectively solved.

Psychology and Law

The interface of Psychology and Law comes closer to the kind of issues that are of interest in this presentation. This area includes those instances in which psychological concepts and research data have had a direct impact upon the legal

system and may result in what Haney (1981) refers to as factual jurisprudence. Although existing examples are yet few, notable decisions at the Supreme Court level involving such things as effect of jury size, death penalty, and validity of psychological tests in employment selection are cases in point.

There are other areas of possible research application toward a factual jurisprudence that can be foreseen, but before detailing some of these it is important to be aware of some of the problems of applying "pure science" to practical fields. Many psychologists seem not to realize that such applications do not automatically nor inevitably concur but rather involve something of an art form in itself in that a sense of practical judgment, political sophistication, legal understanding and realistic planning are all called for. Some refer to such an endeavor within the applied behavioral sciences as "behavioral engineering." Such a term is an apt one as it implies a technological approach and provisional solution to problems in a manner that is not always elegant nor aesthetic. However, such an approach is practical since it does deal with problems within the real world. The Psychology and Law interface is particularly fraught with such pitfalls since, as previously noted, the entire conceptual bases are so disparate and the development of a factual jurisprudence will require a deft, delicate touch as is so effectively depicted in the Haney article.

One of the areas that would seem to benefit from a behavioral analysis and application is that of sentencing and its effects. Sentencing procedures, of course, must be distinguished from the process of determination of guilt by the trier of fact. It appears that an inordinate effort is expended by the psychological community in testifying as to the defendant's mental status at the time of the commission of the offense with regard to the issue of guilt. Such efforts, it would seem, could be better devoted to the development of some kind of rational behavior matrix that could aid the Court in the determination of a meaningful sanction once the issue of guilt has been determined. There are many who have supported such a notion of bifurcation as they contend that psychological testimony

has no place in the Court relative to the issue of guilt and that that is a matter which should be better left to the trier of fact. In turn, psychological data and testimony could be better addressed to the question of sanctions, taking into account relevant psychological variables that hopefully could be quantified and entered into a kind of sentencing matrix. This is precisely the position of the present paper and, it should be noted, that this is accomplished to some extent in the federal system as we are frequently designated "study cases," the results of which are directed to such issues. However, we lack a formalized rationale based upon what might be called a "behavioral scenario" which takes into systematic account all relevant variables, in the sense of a functional analysis, which may ultimately contribute to a rational sentence recommendation prior to final sentencing. It might be noted that we do have such formalisms that are used in the decision making process after the inmate has been incarcerated; the most notable of which perhaps being the U. S. Parole Commission's salient factor guidelines.

If one has ever examined sentencing provisions as contained, for example, in Title 18, U.S.C., one is faced with a bewildering array of sentence terms, fines, and other provisions which appear to elude any rational behavior analysis. Indeed, laws are essentially codified statements of contingencies of reinforcement in that a given behavior is specified and then the consequences (usually punishing or aversive) are specified, although there is scant evidence that the behavioral scientist ever played any part in such formulations. It is strongly felt that this represents a central area in need of sound behavioral research as an example of the application of psychology toward a factual jurisprudence.

A second area that also represents an area of critical need is the analysis and application of punishment procedures which so permeate the fabric of the entire criminal justice system. A recent evaluation of the effectiveness of punishment as practiced in the criminal justice system (Cavender 1979) reveals that with the specification of some 12 optimal conditions of punishment, not one was met by the system; all twelve were deemed to be failures. Since punishment is assumed to

be one of the major effects and objectives of sentencing and incarceration, and since many judges readily declare that this is the principal effect intended by incarceration, (i.e., as punishment not for punishment), such a finding as Cavender's is nothing short of remarkable! It is well known that judges have enormous discretion in imposing sanctions and it would seem that psychology should make a concerted effort to develop and provide a data base to assist the Court with a more rational, factual support system in imposing such all important sanctions affecting the very condition of human life.

Psychology of Law

Before proceeding to suggestions as to how some of the foregoing issues of Psychology and Law might be implemented, a few brief comments will be made on the nature of Psychology of Law. This concept encompasses such things as the behavioral nature of law and society's perceived need for law. In some respects, the cultural anthropologists and sociologists are already involved in such questions. The Psychology of Law would also examine the law as a controlling agency (after Skinner, 1953) and the nature of natural contingencies vs rule-following contingencies (Skinner 1969). Finally, such issues as the relation between psychology and law and the broader concern of cultural design are involved. Admittedly, though such issues are much more grandiose and are clearly beyond the scope of this presentation, it is important that they be noted as examples of the kind of concepts and problems that would be subsumed under the rubric of the Psychology of Law.

Logistics of Implementation of Psychology and Law

It is one thing to identify and discuss the above matters pertaining to Psychology and Law yet quite another to suggest practical implementations. However, some encouraging signs do appear. Both professional and political interfaces must be identified and developed which will permit an orderly and effective application of psychology to the justice process and there are certain indications that such is beginning to occur. In the first place, we now have established Div. 41 of the

APA-Psychology and Law which should provide a professional vehicle at the national level. In addition, the American Academy of Forensic Psychology is another professional resource. In the state of California, for example, there is a Forensic Committee of the California State Psychological Association which has already exerted some significant impact on the state legislative process. There is the further need for such organizations to be represented to political and legislative committees and agencies where the all-important enabling legislation is enacted. There is some precedent for this at the state level (California) as psychologists have testified, for example, in the case of divorce mediation legislation, and at the national level where the APA has submitted amicus curae briefs, but the la process is usually within the context of existing legislation and/or legal decisio and does not necessarily pertain to the enactment of new legislation.

A promising tactic would involve the deployment and direct assignment of psychologists to the courts and probation and parole agencies as full time, on-line staff. This would be in contrast to the utilization of court panel provides of expert witness (most of whom are naive with respect to the criminal justice system) as is presently the case. A case in point exists within the greater Los Angeles area where there is one major federal institution which at one time had six full time psychologists on its staff, while within the federal court-probation system in the same area there is not one full time mental health professional on the staff. Finally, as new legislation is enacted such as S.1473 (Criminal Justice Reform Act) which establishes a sentencing commission, such a commission would seem to offer an excellent opportunity for organized forensic psychology to make a significant input to the Psychology and Law interface.

Conclusion

This presentation has attempted to focus upon an important new interface of psychology and law which would tend to place psychology more at the cutting edge of the decision-making process rather than remaining in its more traditional role of practicing within the legal system and providing services after the fact. Several

examples were presented and discussed along with suggestions for implementation which could provide for such an outcome. Although much is yet to be learned of psychology and law, and our expertise is imperfect, it is at least as valid and perhaps more so than the non-expertise of others who will be making the critical decisions that will affect and constrain us all. The time is now upon us for professional psychology in the forensic area to become more actively and universally involved in an area which has traditionally been dominated by attorneys, jurists, and legislators. In this way it is hoped that the ultimate goal of a more compatible interface between natural law and juridical law views of man and his behavior can be more nearly realized.

FOOTNOTE

1. Based in part upon a presentation delivered at a symposium entitled, "Psychology Incarcerated: Roles and Dilemma" of the American Psychological Association Annual Convention, Los Angeles, California, 1981.

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